



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 31, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-2011

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 34555.

The Public Integrity Unit of the Office of the Travis County District Attorney (the "district attorney") received an open records request for "[a]ll files concerning an investigation of [Senator] John Whitmire." You state that you have released to the requestor a few of the requested documents. You have submitted to this office other documents, however, that you contend are excepted from required public disclosure under sections 552.101, 552.108, and 552.111 of the Government Code.

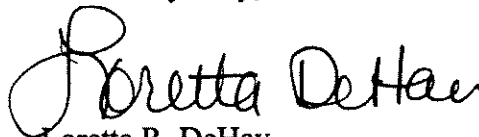
You first contend that all records in Exhibit A constitute records of the grand jury and thus are exempt from the provisions of the Open Records Act. We agree. Exhibit A encompasses Travis County Grand Jury subpoenas and the documents reached by those subpoenas. The Open Records Act specifically excludes the "judiciary," of which grand juries are a part, from the provisions of the act. *See* Gov't Code § 552.003(b). Information that the grand jury formally requests or directs the district attorney to obtain is in the constructive possession of the grand jury and, therefore, is not subject to the Open Records Act. *See generally* Open Records Decision No. 398 (1983) (audit prepared at direction of grand jury). Similarly, under rule 6(e) of the Federal Rules of Criminal Procedure, disclosure of matters occurring before a federal grand jury generally can be made only on the order of a court. Open Records Decision No. 403 (1983). We therefore conclude that all records in Exhibit A come within the exclusion of section 552.003(b) and need not be released.

We further conclude that, because the documents contained in Exhibit B pertain solely to the district attorney's efforts to obtain the records sought in the grand jury subpoenas, those records reflect the district attorney's actions while serving as an agent of the grand jury and, thus, may also be withheld as records of the grand jury. See Open Records Decision No. 411 (1984).

Finally, you seek to withhold Exhibits C through H as attorney work product. This office recently issued Open Records Decision No. 647 (1996), holding that a governmental body may withhold information under section 552.111 of the Government Code if the governmental body can show (1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5. The work product doctrine is applicable to litigation files in criminal as well as civil litigation. *Curry v. Walker*, 873 S.W.2d 379, 381 (Tex. 1994) (citing *United States v. Nobles*, 422 U.S. 225, 236 (1975)). In *Curry*, the Texas Supreme Court held that a request for a district attorney's "entire file" was "too broad" and, citing *National Union Fire Insurance Co. v. Valdez*, 863 S.W.2d 458, 460 (Tex. 1993), that "the decision as to what to include in [the file] necessarily reveals the attorney's thought processes concerning the prosecution or defense of the case." Because the requestor in this instance seeks all information regarding a particular case, we agree that you may withhold the requested information pursuant to section 552.111 of the Government Code as attorney work product. However, you may choose to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

¹As we resolve this matter under section 552.111, we need not address the other exceptions you have raised. We note, however, that some of the information submitted to this office for review *is* confidential by various confidentiality provisions, the release of which may constitute a criminal offense. See Gov't Code § 552.352.

LRD/RWP/rho

Ref.: ID# 34555

Enclosures: Submitted documents

cc: Mr. Mike Ward
Reporter
Austin American-Statesman
P.O. Box 670
Austin, Texas 78767-0870
(w/o enclosures)